

Remarks

The Official Action dated September 12, 2005 has been carefully considered. Consideration of the remarks presented herein and reconsideration of the rejections are respectfully requested.

Claims 1-37 remain in the present application. Claims 1-8, 10-16, 18-20, and 25-36 were rejected under the argument they are anticipated by the Murphy reference, and dependent claim 37 was rejected under the argument it is obvious over the Murphy reference in view of the Masuda reference. Dependent claims 9, 17, and 21-24 have been indicated as allowable.

In the Final Office Action, the Examiner argued that the Murphy reference teaches the first end portion of the float guide member 108 is inserted into and held within the tank opening prior to attaching the mounting device 106. Applicants respectfully disagree. Murphy discloses that the float guide member 108 is first attached to the mounting device (the swivel connector 104/106) and then the entire assembly is attached to the tank. In particular, Murphy states

As shown in FIG. 3, a snap connecting member 146 may be used to connect the rod 108 to the swivel top 104, although other connectors known in the art may be used. In one embodiment, the snap member 146 may be snapped into a proximal end 150 of the rod 108, and then connected with the swivel top 104. For example, as shown in FIGS. 9 and 10, the proximal end 150 of the rod 108 and the snap member 146 are inserted into a connecting tube 148 of the swivel top 104 until a top portion of the snap member 146 snaps over a top 149 of the connecting tube 148. As shown in FIGS. 9-12, the connecting tube 148 is attached to a side wall 172 of the swivel top 104 by connecting members 163 extending radially from the connecting tube 148 to the side wall 172. Passageways 161 are thereby formed to extend through the swivel top 104. One of ordinary skill will appreciate *that in the assembled operational form, the snap member 146 with the rod 108 connected thereto* will extend through the interior passageway 174 of the swivel bottom 106, to extend into the tank. (emphasis added)

The reference further states:

The swivel bottom 106 may be adapted for secure, non-rotatable mounting on a tank, and preferably on a conventional opening of a tank, such as a capped vent opening.

Accordingly, Applicants respectfully traverse the rejections as the Murphy reference does not disclose all of the claim elements. In order to anticipate a claim, a reference must teach each and every element of the claim. MPEP § 2131. In particular, "Under 35 U.S.C. § 102, every limitation of a claim must identically appear in a single prior art reference for it to anticipate the claim." Gechter v. Davidson, 116 F.3d 1454, 1457, 43 USPQ2d 1030, 1032 (Fed. Cir. 1997). The Murphy reference does not disclose every element of the independent claims, in contrast to the assertion in the Office Action. For example, with respect to claim 1, the Murphy reference does not disclose a mounting device attached to the level indicator housing and including an interior passageway, wherein the mounting device is adapted to attach to a tank opening after a separate float guide member (e.g. a rod) is engaged with the tank. Accordingly, the level indicator housing in claim 1 attaches to the tank opening via a mounting device after a separate float guide member is engaged with the tank. In contrast, in the Murphy reference cited in the Office Action, a housing 102 includes a level indicator 184, and a rod 108 extends from the housing 102 and "defines a travel path for a float 112". The rod 108 and the housing 102 simultaneously connect to the tank "in assembled operational form" via a swivel top 104 and swivel bottom 106 having a threaded portion. Accordingly, Applicants found no disclosure in the reference of an engagement of the float guide member to the tank which is separate from the engagement of the level indicator housing to the tank, in contrast to claim 1 where a mounting device attached to the housing is adapted to attach to a tank opening after a separate float guide member is engaged with the tank.

Similarly, with respect to independent claim 10, the reference does not disclose, for example, a float guide member comprising a first end portion that engages the tank opening. Rather, the rod 108 disclosed in the reference does not engage the tank opening but, to the

contrary, connects to a swivel top 104, such as via a connecting member 146, and the swivel top 104 connects to the tank opening via the threaded swivel bottom 106. The rod 108 disclosed in the Murphy reference includes no such first end portion that engages the tank opening, and Applicants found no such float guide member in the reference.

Likewise, with respect to independent claim 29, Applicants found no teaching in the Murphy reference of attaching a mounting device for the level indicator housing to the tank opening after the first end portion of the float guide member is engaged with the tank opening. Rather, in the Murphy reference, both the rod 108 and the housing 102 connect to the tank via a swivel top 104 and bottom 106, and Applicants found no teaching of a separate attachment or engagement as claimed.

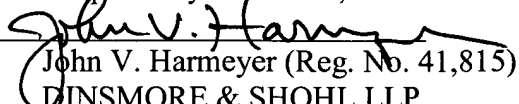
Moreover, with respect to independent claim 20, the claim recites a level indicator including a first indexing device adapted to interact with a first corresponding level indicating gear to substantially prevent movement of the first indexing device away from the first corresponding level indicating gear. As further specified in dependent claim 21, the first indexing device could interact with the gear via a tongue and groove structure, for example. While the Murphy reference discloses gears, Applicants found no such interaction or such structure for preventing movement of an indexing device and gear, in contrast to either of these claims.

Accordingly, for at least the above reasons, it is respectfully submitted that the cited reference does not disclose all of the elements of these claims, and it is also submitted that the reference does not disclose all elements of the dependent claims for at least these reasons. Accordingly, it is respectfully requested that the rejections be reconsidered and withdrawn.

Claim 37 was rejected under the argument that it is unpatentable under 35 USC § 103(a) over the Murphy reference in view of JP2004340636. Applicants traverse the rejections as the combination of the references still does not teach or suggest all of the elements of these claims. A §103 rejection based upon a combination of references is not proper unless there is some suggestion or motivation to combine the references, and the references, as considered in the argued combination, must teach or suggest all the claim limitations. MPEP § 2143. In this case, there can be no teaching or suggestion of the method of this claim when JP2004340635 does not appear to make up for the deficiencies of the Murphy reference, detailed above with respect to independent claim 29 from which claim 37 depends. Applicants found no teaching in either reference of, for example, attaching the mounting device for a level indicator housing to the tank opening after the first end portion of the float guide member is engaged with the tank opening. Furthermore, even if prior art could be combined to result in a claimed invention, the combination would not render a claim obvious unless the prior art suggests the desirability of the combination. In re Mills, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990).

Accordingly, for at least the above reasons, it is respectfully requested that the rejections be reconsidered and withdrawn. It is believed that the above represents a complete response to the rejections and that the present application is in condition for allowance. Reconsideration and an early allowance are requested.

Respectfully submitted,


John V. Harmeyer (Reg. No. 41,815)
DINSMORE & SHOHL LLP
1900 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202
(513) 977-8649